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Filed via regs.comments@federalreserve.gov

Jennifer J. Johnson, Secretary
Board of Governors of the Fund Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Re: Reg B Docket No. R-1167
Reg DD Docket No. R-1171
Reg E Docket No. R-1169
Reg M Docket No. R-1170
Reg Z Docket No. R-1167

Dear Ms. Johnson:

Thank you for the opportunity to offer comments on the proposed changes to Regulations B, DD, E, M, and Z and to offer information and comments with respect to debt cancellation and debt suspension agreements. CUNA Mutual Group (CMG) provides a broad range of insurance and related financial products, services and expertise to credit unions and their members both within the United States and internationally. CMG is a leading document provider to credit unions providing operational lending and deposit documents to over 7000 credit unions.

“Clear and Conspicuous” Standard for Disclosures -
In general CUNA Mutual Group applauds the Board’s efforts to standardize the definition of the terms “clear and conspicuous” under the various regulations requiring that consumers receive disclosures regarding various financial services. The commentary has been revised to include uniform standards for determining whether a disclosure is considered clear and conspicuous. For the most part these standards are reasonable and easily applied to the disclosures that must be provided to consumers. However, in the case of Regulation Z two of the standards may present difficulty and may even be viewed as contradictory.

As proposed, §226.2(a)(27)-1.v would require that lenders avoid the use of highly technical business terminology whenever possible. In addition, §226.(2)(a)(27)-1.vi would require lenders to avoid explanations that are imprecise and readily subject to different interpretations. The nature of lending disclosures is such that it is often necessary to use highly technical business terminology and legal terms of art in order for disclosures to be accurate, precise and not subject to different interpretations.

Information Regarding Debt Cancellation and Debt Suspension Agreement -
Debt cancellation and debt suspension products are an alternative, not a replacement for credit insurance. These forms of debt protection products are available on both closed-end and open-end loans and are available for a number of types of loans including all types of consumer loans, credit card, home equity and second mortgages. There is a movement toward offering these products in the case of first mortgages as well.

Debt cancellation and debt suspension products are in their infancy, and the full breadth and scope of these products has not been fully developed. As lenders and borrowers become more familiar with them, it is likely there will be expansion in the types of products available to borrowers.

Credit unions use the currently available products to design and build debt cancellation packages specifically tailored to meet the needs of their members. The packages can include bundled protection for such things as death, disability, and involuntary unemployment. Protection is also available as combinations of individual components such as death and disability, disability and unemployment or death alone. These are only illustrative examples as other combinations may be available depending on the needs of the credit union's membership.

Because of the close association many credit union memberships often have with one or more employers, credit unions often design debt cancellation and debt suspension products to complement the benefits members receive through employers. For example, a credit union whose membership is employed by an employer that offers very generous death benefits but little in the way of disability, may decide not to offer debt cancellation coverage for death but would offer a debt cancellation package that included disability and involuntary unemployment provisions.

Credit unions typically make debt cancellation protection products available at the "point of sale," such as at the time of an application for a loan, when a member opens an open-end plan and at the time a member requests an advance on an open-end plan. The benefits to members of debt cancellation products are optimized by purchasing these products at the point-of-sale as opposed to after the fact.

Credit insurance, debt cancellation and debt suspension products have a number of similarities as well as a number of differences. All three products treat both closed-end and open-end credit similarly. Also, all three products are available only in connection with an outstanding credit obligation and can be designed to extinguish all or part of the borrower's debt in the event of a triggering event.

The differences in these products lie in the fact that unlike credit insurance, debt cancellation and debt suspension products are not insurance. Credit insurance is provided to the borrower under a separate contractual agreement. Although the agreement is related to the loan, it is not made part of the loan agreement. The lender generally does not enter into the separate insurance agreement providing the insurance, rather a third party which is an insurance company generally enters into the insurance agreement.

Debt cancellation and debt suspension products are not separate agreements but contractual provisions that are integrated with the loan agreement usually through an addendum. The lender and the borrower are the only parties involved with debt cancellation and debt suspension products. Debt cancellation and debt suspension products are generally made available to borrowers on a voluntary basis giving borrowers the freedom to determine whether they should be made a part of the agreement.

A third party insurer does not directly make payments on the loan when an event triggering a debt cancellation or debt suspension occurs, unlike credit insurance where a third party insurer agrees to make payments or pay off the loan under certain circumstances. When a debt cancellation or debt suspension event occurs the lender agrees to forgive all or part of the debt or to defer payments for a defined period of time. Lenders often engage third party insurers to insure themselves against losses they may sustain from forgiving debts when required to do so by a debt cancellation or debt suspension agreement. The third party insurers do not pay debt cancellation or debt suspension benefits to borrowers.

Debt cancellation and debt suspension products offer lenders significantly more flexibility in tailoring contract provisions to meet their borrowers' individual needs because they are not subject to the severe limitations on the types of coverage triggers as are credit insurance products. However, as noted above these products are in their infancy and credit unions are just now beginning to explore novel debt cancellation and debt suspension products to meet their members' debt protection needs.

You have asked for comment as to the need for guidance concerning the provisions of Regulation Z allowing the costs of debt cancellation products to be excluded from the finance charges disclosed in a lending transaction (see: 12 CFR §§226.4(b)(7) and (10), 4(d)(1) and (3)). We strongly suggest that you consider substantially expanding the scope of §226.4(d)(3) to include fees for debt suspension agreements as well as debt cancellation agreements.

It is necessary to broaden provisions regarding the exclusion of debt cancellation coverage from the finance charge to avoid inconsistency and confusion to borrowers in the disclosure of debt cancellation and debt suspension products. Section 226.4(d)(3) restricts the types of debt cancellation coverage that may be excluded from finance charges. Currently, the circumstances for excluding debt cancellation fees from finance charges are limited to cancellation of all or part of a debtor's liability when the value of the collateral securing the obligation is less than the amount of the obligation (frequently called "GAP" coverage) when the debtor dies, when the debtor's health is impaired, if the debtor sustains a loss of income or in the event of an accident. In addition, the fees for debt suspension agreements may not be excluded from finance charge disclosures under any circumstances.

As indicated above, debt cancellation coverage is a diverse product that allows lenders to tailor agreement terms according to the needs of their borrowers. Recently there has been growing interest in debt cancellation coverages that provide benefits under circumstances other than those described by §226.4)(d)(3). For example, in addition to the typical circumstances of death, disability, accident or loss of income, there is demand for debt cancellation in the event of divorce or legal separation. Divorce and legal separation are not coverage triggers addressed by §226.4(d)(3) and therefore the costs for such a product cannot be excluded from required finance charge disclosures. Divorce and legal separation frequently result in a significant financial burden to borrowers making it difficult to meet financial obligations such as loan payments, sometimes leading to loan defaults and in some cases bankruptcy. While divorce and legal separation may not result in a loss of income, they are events that may result in the borrower being unable to repay his or her debt to the credit union, which is a criteria that appears to be determinative under most circumstances addressed in §226.4(d)(3) as to whether the cost may be excluded from finance charge disclosures.

Divorce and legal separation are events that are illustrative of circumstances not addressed in §226.4(d)(3). As this product develops, credit unions are likely to encounter numerous other circumstances where borrowers may wish to purchase protection to help guarantee their ability to repay their financial obligations.

In addition, §226.4(d)(3) does not include any provisions for debt suspension agreements. Debt suspension agreements are similar to debt cancellation agreements and may be triggered under similar circumstances. The obligation to make payments on the debt is deferred for a period of time, rather than the debt being canceled under predetermined circumstances.

Section 226.4(d)(3) needs to be written in a more generalized manner to allow fees for any debt cancellation or debt suspension agreement voluntarily agreed to by the borrower to be excluded from required finance charge disclosures. There is no rational basis for allowing the costs of certain debt cancellation agreements to remain outside of the finance charge while requiring the cost of other agreements that are equally beneficial to the borrower to be included in the finance charge. Likewise, costs for debt suspension agreements, which can be remarkably similar to debt cancellation agreements, should be treated like debt cancellation products and allowed to be excluded from finance charge disclosures.

Without generalization of the types of debt cancellation and debt suspension agreements that may be excluded from required finance disclosures, the result will be inconsistent disclosure treatment for different types of debt cancellation and debt suspension costs. For example, the cost of debt cancellation triggered by death or disability will be excluded from the finance charge, but a fee for cancellation in the event of divorce must be included in the finance charge.

The inconsistency of these disclosure requirements is likely to be confusing to borrowers. Employees of credit unions and other lenders are also likely to be confused by these inconsistencies and unable to explain the reason for the differences to borrowers.

It is not necessary for the Board to address conversions from credit insurance to debt cancellation or debt suspension agreements with additional regulations or an extension of existing regulations. As discussed above, a significant difference between debt cancellation products and credit insurance is that debt cancellation terms and conditions are integrated into the loan agreement. Conversion from insurance to a debt cancellation agreement requires the amendment of the contract with the borrower. Under general contract law principals a lender could not unilaterally amend loan agreements to include a debt cancellation agreement. To effect such a change it would be necessary for the lender to contact the borrower and obtain the borrower's consent to the amendment of the contract. Whether a lender has complied with the requirements for amending the loan agreement depends entirely on applicable state law. Federal regulations would not be helpful in determining whether the lender has successfully amended the contract. Therefore, additional regulation in this area is not likely to be helpful nor is it necessary.

Finally with regard to whether disclosures should be required with the sale of a debt cancellation or debt suspension agreement, the Office of the Comptroller of the Currency (OCC) has issued final regulations addressing the manner in which national banks may offer debt cancellation and debt suspension agreements to their customers. These regulations became effective June 16, 2003. States, such as California, have directed their state-chartered financial institutions to view the OCC rules as "best practices". It is anticipated that more states will follow suit.

The OCC's stated goal in adopting the rules is to restrict or prevent practices that hold the most potential for abuse and to require adequate disclosure of the nature of the agreement being offered. Increased disclosure is emphasized.

Separate oral and written consumer disclosures are required, depending on the sales channel (i.e., face to face, mail, phone, internet):

- Notice of the anti-tying requirement
- Notice that debt suspension postpones but does not eliminate the debt
- Amount of the fee
- Option to pay fee in periodic installments rather than single premium fee
- Disclosure whether activation of the coverage will suspend the consumer's ability to use the credit line
- Explanation of eligibility requirements as well as limitations and exclusions
- Thirty day right to cancel without obligation

A short form disclosure must be made orally when debt cancellation or debt suspension is first solicited. A long form disclosure must be made in writing before the borrower completes the purchase of the debt cancellation or debt suspension agreement. The borrower's written affirmation of election to purchase debt cancellation or debt suspension coverage and acknowledgment of receipt of the disclosures must be received before entering into a debt cancellation or debt suspension agreement. There are special rules for transactions by telephone, written mail inserts, "take-one" applications, and electronically.

The OCC rules prohibit the tying of the purchase of debt cancellation or debt suspension to the terms and conditions of the credit. As a result, under Regulation Z, fees for debt cancellation and debt suspension should be excluded from the disclosed finance charge (i.e., APR).

The OCC has already provided a comprehensive, well thought-out approach to disclosures relating to the sale of debt cancellation and debt suspension agreements. The products are growing and over regulation may hamper their development. Therefore, other agencies should show restraint in needlessly complicating this regulatory framework.

This opportunity to provide guidance and insight on the Regulations and debt cancellation and debt suspension agreements is appreciated. If you have questions or wish to discuss any comments expressed herein, please do not hesitate to contact me at anne.gehring@cunamutual.com or at 608.232.6493.

Sincerely,

Anne M. Wenninger Gehring

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